

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217431; B-217432

DATE: April 22, 1985

MATTER OF: Venusa, Ltd.

DIGEST:

Unless the protester demonstrates bad faith by the agency or the absence of any reasonable basis for the determination, GAO will not question a contracting agency's determination of nonresponsibility where a pre-award survey shows poor performance of the bidder on prior contracts and where the bidder has not positively shown that it has taken corrective action.

Venusa, Ltd., a small business, protests the rejection of its bids under Defense Logistics Agency (DLA) invitation for bids (IFB) Nos. DLA120-84-B-3117 and DLA120-84-B-3118. Both of the IFB's involve the procurement of similar medical supplies, and under both Venusa was found to be nonresponsive.

We deny the protests.

Shortly after bid opening, the contracting officer requested a pre-award survey on Venusa from the Defense Contract Administration Services Management Area (DCASMA), New York. The survey recommended that no award be made to Venusa because Venusa was delinquent in its performance on five of eight pending contracts for similar supplies. The report stated that these delinquencies resulted from matters outside of the government's control and not beyond Venusa's control and that the initial delivery dates on the three other pending contracts had not yet passed. The contracting officer found Venusa nonresponsive on both solicitations.^{1/}

^{1/} The contracting officer did not refer the question of Venusa's responsibility to the Small Business Administration (SBA) for consideration under its Certificate of Competency (COC) program, relying on an SBA regulation (13 C.F.R. 125.5(c) (1984)) which makes a firm ineligible for the COC program if it supplies a foreign product. Venusa is a regular dealer and its bids stated that the products to be supplied would be foreign.

The determination of a prospective contractor's responsibility lies with the contracting officer, and in making that determination, he is vested with a wide degree of discretion and business judgment. S.A.F.E. Export Corp., B-209491; B-209492, Aug. 2, 1983, 83-2 CPD ¶ 153. Generally, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination. Ibid., at 3.

While Venusa has simply alleged bad faith on the part of government personnel, it has not presented, nor does the record contain, any support for this allegation. Additionally, while Venusa states that it has performed certain other government contracts promptly and states that it has assured DCASMA that it would try to make timely deliveries in the future, it has not demonstrated the absence of any reasonable basis for the agency's determination of nonresponsibility. In this connection, DLA policy (as set forth in a DLA policy letter dated September 12, 1984) indicates that a "no-award" recommendation should be made in a pre-award survey when a supplier has a history of poor past performance and when it fails to demonstrate "positively" that it has in place the necessary organization and other factors for prompt performance. We find that the pre-award survey and the record of Venusa's past performance, in general, provided a reasonable basis for the contracting officer's determination.

The protests are denied.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel